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VIA E-MAIL AND US MAIL

Margo Ludmer, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007

Re: Request for Information Pursuant to Section 104(e) of the Comprehensive
Environmental Response, Compensation, and Liability Act, 42 U.S.C. §
9604(e)
789 Upper Mountain Road, Lewiston, New York

Dear Ms. Ludmer:

This letter ("Response") responds on behalf of Stauffer Management Company LLC ("SMC"), indemnitor of Bayer CropScience Inc. ("BCS") (corporate successor to Stauffer Chemical Company) to the United States Environmental Protection Agency's ("USEPA") undated request for information to BCS pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9604(e) (the "104(e) Request"). The 104(e) Request seeks information relating to the release or purported release of hazardous substances into the environment at 789 Upper Mountain Road, Lewiston, New York (the "Site"). Thank you for the extension of time to respond to the 104(e) Request.

Preliminary Statement

By way of background and context, SMC is a holding company managing certain assets and liabilities associated with the operations of former Stauffer Chemical Company ("SCC"), which was acquired by a predecessor of BCS in 1987. Unless indicated in this Response, SMC's responses are made on behalf of both SMC and BCS (collectively referred to herein as "Respondent"). Respondent is willing to work with USEPA to provide it with information to the extent that it is relevant and reasonably obtained. Respondent's good faith in responding to the 104(e) Request should not be construed as (i) an admission or acknowledgment of any liability or of any issues of law, (ii) an admission that any hazardous substance was transported to, released or deposited by Respondent, any predecessor, or any agent at the Site; or (iii) a waiver of any rights or defenses by Respondent with respect to any claim which is based upon this Request or relates in any way to the Site. Subject to the following General Objections, as well as the specific objections that may be

asserted in connection with an individual request, Respondent responds to the specific requests for information as follows:

General Objections

A. Respondent asserts all applicable privileges and protections it has with regard to USEPA's enumerated inquiries including the attorney-client privilege, the attorney work product doctrine, materials generated in anticipation of litigation, and privileges for materials which are proprietary, company confidential, or trade secret;

B. Respondent objects to the requests on the grounds that the requests use undefined terms and are overbroad, vague, ambiguous, irrelevant and unduly burdensome so as to exceed statutory authority under CERCLA and contravene Respondent's constitutional rights;

C. Respondent objects to the requests on the grounds that the requests are overbroad and unduly burdensome in that they seek information or documents not specifically related to the Site. As such, these requests exceed USEPA's statutory authority under CERCLA and contravenes Respondent's rights. Among other things, the requests seek information concerning the operations of SCC at its facility located in Lewiston, New York (the "SCC Facility"). Respondent does not believe USEPA has authority to seek such information when there is no evidence of any nexus between the SCC Facility and the Site, which are not adjacent.

USEPA apparently is suggesting that the processing of zirconium, niobium and tantalum generate radioactive slags that are alleged to be found at the Site. See Request No. 17. It is Respondent's position that absent evidence that these slags are in fact found at the Site, USEPA has no authority to investigate an entity solely because it may have generated such slag.

In fact, the Department of Energy's Oak Ridge National Laboratory 1986 report noted that the anomalies exhibiting elevated radionuclide concentrations from the Lewiston region were associated with phosphate slag material (formerly identified as cyclo wollastonite, synthetic CaSiO_3) used as bedding for asphalt driveways, parking lots, and fill applications. As described in the Response to No. 7.a., SCC's products did not include phosphate products.

The SCC Facility was closed in or about 1977 and demolished with investigation and cleanup soon thereafter. The State of New York was involved in the investigation and cleanup and those records should be available to USEPA. The requests also seek information concerning certain disposal sites ("SCC Landfill", "Upper Mountain Road Landfill"). These facilities have previously been investigated by the State of New York and/or USEPA and those records likewise should be

available to USEPA. Moreover, no nexus has been shown between the Site and these landfills.

Notwithstanding the foregoing, Respondent has conducted an investigation regarding its operations at the SCC Facility and the landfills and has responded to the requests concerning same;

D. Respondent objects to any requirement to produce documents or information already in the possession of a government agency, or already in the public domain. Such requirement is duplicative and, therefore, unduly burdensome;

E. Respondent conducted a review of available records that was practicable given the time period and has supplied information concerning the Site and other information sought by the 104(e) Request which was found during that review. If more information is desired, Respondent respectfully requests further reasonable notice that such information is desired;

F. Respondent objects to the requests to the extent they call for Respondent to make a legal conclusion concerning Respondent's potential liability under CERCLA for the Site, which liability is not admitted but is expressly denied;

G. Respondent objects to the request that the Responses be certified as CERCLA does not authorize and/or require that persons or entities responding to a 104(e) request provide a certification or affidavit with respect to such response; and

H. Notwithstanding and without waiving these objections, and subject to them, Respondent has prepared this Response based upon the information reasonably available to it. As a result of the passage of time SMC is unaware of any individuals with personal knowledge of the prior operations of SCC at the SCC Facility or the landfills referenced above. Further, as noted below the SCC facility was closed in 1977 and while some documents of SCC's operations were located, many were not. Where the requests are considered vague, ambiguous, overbroad, unduly burdensome, or beyond the scope of USEPA's authority pursuant to Section 104(e) of CERCLA, Respondent makes appropriate and reasonable efforts to provide responsive information based on Respondent's interpretation of the requests. To the extent that information submitted herein is not required by law or is otherwise outside the scope of USEPA's 104(e) authority, that information is voluntarily submitted. Respondent waives no rights or protection as to information it voluntarily submits.

Responses

Subject to the foregoing, Respondent provides the following responses and produces documents marked SMC-789 0001 through 1345.

CORPORATE INFORMATION:

1. State the correct legal name and mailing address of the Company.

Answer: Bayer CropScience Inc., 800 N Lindbergh Blvd, St. Louis, MO 63167.

2. Identify the legal status of the Company (corporation, partnership, sole proprietorship, specify if other) and the state in which the Company was organized or formed.

Answer: Bayer CropScience Inc. is a corporation organized under the laws of the State of New York.

3. State the name(s) and address(es) of the President, Chairman of the Board, and the Chief Executive Officer of the Company.

Answer:

President: Jacqueline Applegate

Chair of the Board of Directors: Richard K. Heller

The mailing addresses of both Ms. Applegate and Mr. Heller are the same as that of BCS. BCS does not have a Chief Executive Officer.

4. If the Company is a subsidiary or affiliate of another corporation, or has subsidiaries, identify each entity, describe the relationship between the entity and the Company, and indicate the date and manner in which the relationship was established.

Answer: The request is overbroad in that it seeks the identification of hundreds of affiliates, as that term is commonly understood in the context of corporate structures, none of which is relevant to any issues concerning the Site. To the extent USEPA seeks the identity of such affiliates they may be learned from publicly available reports concerning BCS's parent corporation. BCS is a wholly-owned, indirect subsidiary of Bayer Aktiengesellschaft, a publicly-traded company organized under the laws of Germany. BCS has one subsidiary, which it does not wholly own.

5. Identify the state and date of incorporation and the agent for service of process in the State of incorporation and in the State of New York for the Company and for each entity identified in your response to Question 4, above.

Answer: BCS repeats the objection stated in Question 4. BCS was incorporated as Rhodia Inc. in the State of New York. Its Certificate of Incorporation was filed on March 26, 1948. BCS's agent for service of process is Corporation Service Company, 80 State Street, Albany, New York, 12207.

6. Describe in detail the history of Bayer CropScience Inc.'s relationship with Stauffer Chemical Company including all changes in ownership that established this relationship (i.e., asset purchases, corporate mergers, or name changes), as well as the dates of such changes in ownership. As applicable, providing copies of any asset purchase agreements, merger documents, and/or agreements of sale, including all attachments and amendments thereto.

Answer: Stauffer Chemical Company incorporated in California in July 1895. SMC-789 1035.

Stauffer Chemical Company incorporated in the State of Delaware on July 24, 1953. SMC-789 1022-1027.

Stauffer Chemical Company (California corporation) merged into Stauffer Chemical Company (Delaware corporation) September 4, 1953. SMC-789 1028-1041.

Via a Stock Purchase Agreement dated September 18, 1987 (closing was December 2, 1987), Rhone-Poulenc, Inc. acquired Stauffer Chemical Company. (There were several corporate reorganizations (1955-1987). All Delaware shares of Stauffer Chemical Company were purchased in the stock purchase by Rhone-Poulenc, Inc.). SMC-789 1068-1098.

Stauffer Chemical Company changed its name to Stauffer Chemical Company Division of Rhone-Poulenc, Inc. by Certificate of Amendment to its Certificate of Incorporation (dated February 5, 1988; filed with the Delaware Secretary of State on February 12, 1988). SMC-789 1099.

Stauffer Chemical Company Division of Rhone-Poulenc, Inc. changed its name to Rhone-Poulenc Basic Chemicals Co. by Certificate of Amendment to its Certificate of Incorporation (dated September 8, 1989; filed with the Delaware Secretary of State on September 18, 1989). SMC-789 1100-1102.

Rhone-Poulenc Basic Chemicals Co. (DE corporation) was merged into Rhone-Poulenc Inc. (NY corporation) by Certificate of Ownership and Merger (dated December 14, 1992; filed with New York Secretary of State on December 23, 1992). Rhone-Poulenc Inc. was the surviving entity of the merger. SMC-789 1103-1108.

Rhone-Poulenc Inc. changed its name to Rhone-Poulenc Ag Company Inc. by Certificate of Amendment to its Certificate of Incorporation (dated July 1, 1998; filed with the New York Secretary of State on July 27, 1998). SMC-789 1109-1110.

Rhone-Poulenc Ag Company Inc. changed its name to Aventis CropScience USA Inc. by Certificate of Amendment to its Certificate of Incorporation (dated January 3, 2000; filed with the New York Secretary of State on January 5, 2000). SMC-789 1111-1112.

Aventis CropScience USA Inc. changed its name to Bayer CropScience Inc. by Certificate of Amendment to its Certificate of Incorporation (filed with the New York Secretary of State on September 20, 2002). SMC-789 1120-1122.

Stauffer Management Company LLC is a holding company responsible to maintain certain assets and certain environmental liabilities from the former SCC and by contract is indemnifying Bayer CropScience Inc. for this potential liability. SMC-789 1113-1119.

OPERATIONS AT OR NEAR THE SITE:

7. Identify all properties that the Company has owned and/or operated within 10 miles of the Site during the years 1930 to 1970. For each property, state the address and dates of the Company's ownership and/or operation, and provide a detailed description of the operations, processes, or business activities that the Company conducted at the property.

Answer: Objection. The request is overly broad and unduly burdensome. The request seeks information concerning SMC's operations in a 300 square mile area from 50 to 90 years ago. Moreover, the alleged issues at the Site concern radioactive materials and a request for a "detailed description" of operations that did not involve radioactive materials is plainly improper.

a. Stauffer Chemical Company facility, located at 5715 Old Lewiston Road, Lewiston, New York 14092 ("SCC Facility"). SMC-789 0058. Between 1946-1978, SCC operated the site as a multi-product chemical manufacturing plant primarily producing industrial chemicals in the metal chlorides and chlorine families. SMC-789 0690-0698, 0702, 0725-0733, 0983. In addition, parachlorothiophenol was produced and bulk methylene chloride and tetrachloroethylene were brought into the plant and repackaged. *Id.* The SCC Facility ceased operations in 1977 and the entire plant was demolished in 1979-1980. *Id.* Stauffer Management Company LLC acquired the site in 2000 as a result of the merger between SMC LLC and Atkemix Thirty-Seven Inc. SMC-789 0967-0977, 1338-1345. For prior operations at the SCC Facility see the response to Request No. 13.

b. Stauffer Chemical Company Landfill ("SCC Landfill"): The documents indicate that SCC used the SCC Landfill from approximately 1953-1969 to dispose of waste from the SCC Facility. SMC-789 0037, 0694. The waste consisted of concrete cellparts, asbestos, graphite, refractory reactor linings, scrap sulfur, scrap metal, silicon oxides, zirconium oxides, titanium oxides, and cinders. *Id.*

c. Upper Mountain Road Landfill/Love Canal North ("UMR Landfill"): The documents demonstrate that SCC or a predecessor company used the UMR Landfill to dispose of waste from the SCC Facility from approximately 1930-1952. SMC-789 0041, 0693, 0699. The waste consisted of concrete cellparts, asbestos, graphite, refractory reactor linings, scrap sulfur, scrap metal, silicon oxides, zirconium oxides, titanium oxides, and cinders. *Id.*

d. Power Authority of the State of New York Disposal Areas: The documents indicate that from 1969 to 1974 SCC operated two disposal sites on land owned by the Power Authority of the State of New York ("PASNY")—just east of the SCC Facility property line. SMC-789 0033, 0063, 0695, 0980. The waste disposed of included: concrete cellparts, asbestos, graphite, refractory reactor linings, scrap sulfur, scrap metal, silicon oxides, zirconium oxides, titanium oxides, cinders, and chemical wastes. *Id.*

8. Indicate whether the Company entered into any oral or written agreements or understandings concerning the Site, or any parcels adjacent to the Site, regarding the transfer of materials to or from the Site or the adjacent parcels, including any arrangements with the current or prior property owners or operators. If so, describe the nature of these agreements or understandings and provide any relevant documents.

Answer: SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents responsive to this Request.

9. Indicate whether the Company had any relationship, formal or informal, with the below-listed individuals or entities, including regarding the transfer of materials to or from the Site or the adjacent parcels. Provide any information or documents in the Company's possession pertaining to these individuals or entities.
- a. Frank B. Brown
 - b. Florence I. Brown
 - c. Lillian Baer
 - d. Stanley Kasprzycki
 - e. Lois Kasprzycki
 - f. Friona Trucking
 - g. Kozdranski Trucking
 - h. Holy Trinity Parish and Cemetery
 - i. Pine Bowl Bowling Alleys

Answer: Documents indicate that at a point in time in the 1970s SCC had a contract with W. Kozdranski Co. to haul waste. SMC-789 0688. Documents indicate that the waste W. Kozdranski Co. hauled may have included sludge, hardwater salts as carbonates, iron, manganese, and magnesium. SMC-789 0067,0069.

As to the rest of the above-listed individuals and entities, SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents responsive to this Request.

10. Indicate whether the Company was ever under contract with the United States Government to produce, refine, or manufacture products between 1930 and 1970. If so, provide a list of materials, quantities, and the dates of production, as well as information relating to the final disposition of the products, by products, and waste resulting from this activity. Provide any documents that relate to this work.

Answer: Objection. SCC over the course of its century of existence owned and operated facilities across the United States and abroad. Undoubtedly SCC was under contract with the United States Government at some of those facilities during some periods. Further, if the house at the Site was constructed in 1957 and there are high levels of radiation in the crawlspace, as the 104(e) Request asserts, activities after 1957 are not relevant, except to the extent they inform concerning pre-1957 activities involving radioactive materials. Respondent disclaims any responsibility to provide information concerning any facilities and operations other than the SCC Facility.

Documents indicate Niagara Smelting Corporation was under contract with the Department of Energy's predecessor agencies to produce an unknown product in 1944 for an unknown duration. SMC-789 1019-1021. Materials involved in the process include: boron trichloride, silicon tetrachloride, sulfur chloride, sulfur dichloride, methyl silicate, boron trifluoride and aluminum trichloride. *Id.* The Department of Energy has subsequently determined, via a study of the historical records of the Niagara Smelting Corporation site, that the site was not involved in the handling of radioactive materials. *Id.*

11. Please indicate whether the Company was ever under contract to provide transportation and/or disposal services for another entity in the Niagara Falls region (e.g., ElectroMet/Union Carbide or any federal agency). If so, provide a list of materials/wastes, quantities, and the dates associated with such transportation and/or disposal, as well as information relating to the final disposition of the materials/wastes. Provide any documents that relate to this work.

Answer: Objection. "ElectroMet/Union Carbide" and "Niagara Falls region" are undefined. No information or documents were discovered that indicate that SCC was ever under contract to provide transportation and/or disposal services for another entity in the vicinity of the SCC Facility.

12. Please provide any information or documents that you may have regarding the hazardous substances and/or industrial wastes, including radioactive material, that came to be located at the Site, and provide the identity of any parties that may have been a source of, or were otherwise responsible for, the contamination. Please identify the source(s) of your information.

Answer: Objection. Apart from the 104(e) Request and the 1986 Oak Ridge Report referenced in the 104(e) Request, SMC is not aware of any basis to assert that "hazardous substances and/or industrial wastes, including radioactive material, came to be located at the Site." SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents responsive to this Request.

STAUFFER CHEMICAL COMPANY FACILITY:

As stated above, no nexus has been shown between the SCC Facility and the Site. Pertinent here, USEPA's authority extends to requests for information concerning the "identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a ... facility or transported to a ... facility." 42 U.S.C. § 9604(e)(2)(A). USEPA has not offered any information concerning such generation or transportation, and SMC's investigation did not uncover any such information. Accordingly, there is no basis to further investigate the activities at the SCC Facility and SMC objects to each and every request concerning the SCC Facility. Notwithstanding USEPA's lack of authority, SMC did investigate the records it retains relating to the SCC Facility and responds to the requests as stated below.

13. Provide any information and/or documents you may have relating to ownership and/or operation by the Company or any other entity, past or present, of the former Stauffer Chemical Company facility on Old Lewiston Road in Lewiston, New York ("SCC Facility"). Identify the dates of your Company's ownership and/or operation of the SCC Facility, and provide copies of all documents evidencing such ownership and/or operation, including but not limited to purchase and sale agreements, deeds, leases, etc.

Answer: Objection. Title documents are available in the public record. Moreover, title to property comprising the SCC Facility is not relevant to alleged disposal of materials at the Site, which is physically distant from the SCC Facility. Documents indicate that prior to 1930 portions of the SCC Facility property were owned by various companies including: American Magnesium Corporation; Titanium Alloy Manufacturing Company; Niagara Lockport and Ontario Power Company; and Niagara Smelting Corporation. SMC-789 0595-0602, 0616, 0617, 0983, 1169-1337. In the early 1930s Niagara Smelting Corporation acquired numerous properties to form what is now the SCC Facility property. SMC-789 0025, 0580-0594, 0603-0614. In 1946 SCC acquired Niagara Smelting Corporation and operated the SCC Facility until its cessation of operations in 1977. SMC-789 0690. In 1987, Atkemix Thirty Seven Inc. acquired title to the SCC Facility property. SMC-789 0967-0977.

14. Identify any persons or entities that concurrently with the Company exercised actual control or that held significant authority to control activities at the SCC Facility, including but not limited to the following; partners or joint ventures; contractors, subcontractors, or licensees with a presence or that engaged in activity at the SCC Facility (e.g., service contractors, remediation contractors, management and operator contractors, licensees providing

technical support to licensed activities); and, any person that subleased land equipment, or space at the SCC Facility.

Answer: Objection. Whether remediation contractors or other contractors had “significant authority to control activities” at the SCC Facility is too vague to allow a response. Moreover, the remediation contractors at the SCC Facility would have conducted their work after the alleged disposal occurred at the Site making the request overly broad and unduly burdensome. Further, to the extent the other entities with authority were not involved with radioactive materials such entities are not relevant. No documents or information were discovered that indicate persons or entities—other than SCC—concurrently exercised control or held significant authority to control activities at the SCC Facility. See also the response to Request No. 13.

15. Describe in detail the nature of the operations at the SCC Facility, including but not limited to the types of work performed there and the industrial, chemical, or institutional processes undertaken at the SCC Facility.

Answer: Objection. The request seeks information concerning activities that do not generate radioactive materials and therefore is overbroad. See Answer to Request No. 7 above.

16. List all federal, state, and local permits and/or registrations, including a description of the respective permits, issued to the Company for the transport, generation, and/or disposal of hazardous substances at the SCC Facility.

Answer: Objection. The request seeks information concerning hazardous substances beyond radioactive materials and is not limited to a period before or proximate to the construction of the structure at the Site and therefore is overbroad. The Record of Decision from 1992 for the SCC Facility recognizes that radioactive material was found at the facility but required no other actions. SMC-789 0862-0939. Accordingly, any permits or registrations issued in connection with the SCC Facility in connection with its 1977 closure and subsequent investigation and remediation are not relevant and SMC has not attempted to locate same. Subject to these objections, SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents responsive to this Request.

17. Provide any information and/or documents related to the industrial processes at the SCC Facility involving tantalum, zirconium, and niobium (also known as columbium), including information regarding the byproducts of such processes.

Answer: Objection. Byproducts unrelated to radioactive materials are overbroad. Documents indicate that the SCC Facility produced zirconium tetrachloride. SMC-789 0711-0719, 0752-0780, 0816, 0839-0859. A typical production process involved liquid chlorine being fed into two separate fluid reactors (main reactor and electric reactor) where the liquid would be vaporized via a fluo thermal process. *Id.* The resulting chlorine gas would react directly with the zircon sand and silicon carbide in the reactors, creating zirconium tetrachloride and silicon tetrachloride. *Id.* The products from the main reactor and electric reactor would be combined and condensed. *Id.* The zirconium tetrachloride would then be extracted and the silicon tetrachloride would be sent for recovery through a separate process. *Id.* Raw materials for the process included or may have included zircon sand, zirconium cyanonitride, zirconium carbide, zirconium oxide, silicon carbide, coke and chlorine. *Id.*

No documents or information were discovered that indicate tantalum or niobium were utilized or processed at the SCC Facility.

18. Indicate whether the Company received, stored, or processed uranium tetrafluoride for conversion to uranium and whether it ever processed uranium or thorium ore at the SCC Facility.

Answer: No documents or information were discovered that indicate SCC processed uranium or thorium ore at the SCC Facility and/or received, stored, or processed uranium tetrafluoride. The Department of Energy has determined, via a study of the historical records of the Niagara Smelting Corporation site, that the site was not involved in the handling of radioactive materials. SMC-789 1019-1021.

19. Provide any information and/or documents related to the nature, chemical composition, or physical state of any radioactive or potentially radioactive materials and/or waste generated, handled, stored, transported, or disposed of at the SCC Facility.

Answer: Documents indicate that the slag underneath the plant's asphalt roadways, deposited at the site by previous owners, contains radioactive materials potentially deriving from a phosphate process. SMC-789 0034, 0054-0056, 0081, 0094-0095, 0860-0861, 0881, 0949, 0966, 1009, 1016. The Niagara County Health Department performed a radiological survey of the roadways within the SCC Facility property and concluded that the slag material could remain on site and did not require any remedial action. SMC-789 0054-0056. Presently, the roadways remain intact at the plant property and are covered by topsoil. SMC-789 0860-0861. As reported in SCC's April 1991 Final Investigation Report, borings taken during SCC's investigation of the SCC Facility showed radiation levels of between .05 and .15 mrem/hr, which required no further investigation or remediation. SMC-789 0094-0095, 0966.

20. Provide any information and/or documents related to any sampling, surveying, or other investigatory activities performed by the Company or others that assessed whether any materials, waste, and/or environmental media at the SCC Facility exhibited characteristics of radioactive activity.

Answer: See Answer to Request No. 19 above.

21. Please provide any information and/or documents related to the disposal of hazardous substances at or from the SCC Facility. Please include any reports, information, or data related to soil and geology at and about the disposal locations. Provide copies of all documents containing such data and information, including both past or current aerial photographs of the disposal locations, as well as documents containing analysis or interpretation of such data from the disposal sites.

Answer: Objection. The request seeks information concerning the disposal of hazardous substances generally, without restriction to radioactive materials and is thus overbroad. The request seeks information concerning the soils and geologic conditions at disposal sites unrelated to the Site and is thus overbroad. The request seeks aerial photographs of disposal sites. Aerial photographs may have been obtained in the past for numerous reasons unrelated to disposal sites, and if related to disposal sites are likely to have been obtained by attorneys and thus constitute protected work product. As aerial photographs are publicly available, requiring SMC to determine whether it possesses aerial photographs of the Niagara Falls region is unduly burdensome; further the request potentially trespasses into privileged areas. The SCC Facility was previously the subject of investigations and actions taken by the New York State Department of Environmental Conservation (Site No. 932056), and Niagara County Department of Health, pursuant to which groundwater, surface water, and soil remedial activities were performed. SMC-789 0862-0939, 0032-0052. The information sought is therefore already available to the USEPA through its own records and other public agency records. Among other documents, SMC refers USEPA to the SCC Facility report, transmitted to the Interagency Task Force on Hazardous Wastes on November 16, 1978, as amended on December 6, 1978 ("Task Force Report"), which describes the SCC Facility's processes, products, time periods and waste disposal sites from 1930-1977. SMC-789 0689-0698, 0720-0733. Further, as evidenced by the individual disposal site reports there is no indication that employees of SCC were concerned with the existence of radioactive materials in the processes undertaken by SCC (radioactive components including "other alpha, beta & gamma emitters" stated to be "not present in waste"). SMC-789 0058-0069.

22. Please provide contact information, including names, telephone numbers, email addresses and physical mailing addresses for all persons and former employees of either the Company or other companies or government agencies that transported or disposed of hazardous substances at and/or from the SCC Facility. If no current contact information is available, provide the last known contact information.

Answer: Objection. As stated, SCC operated at the SCC Facility for decades and ceased operations by 1977; further, any disposal at the Site must have occurred before 1957 and thus all percipient witnesses to those activities are unlikely to be located (assuming they are not deceased). SMC conducted a reasonable search and examination of the records in its possession, custody, and control, and found no documents or information responsive to this Request. Specifically, SMC attempted to learn last known addresses for Thomas E. Purcell (Plant Manager 1973-1977), C. Luckey Heath (Plant Manager 1971-1973), H. John Laehy (Plant Manager 1970-1971), Edgar L. Conant (Plant Manager 1966-1970), and Howard Zeh (Plant Manager 1960-1966). SMC-789 0676-0681, 0685, 0698. Based on publicly available information on the internet SMC believes H. John Laehy and Edgar L. Conant are deceased. To the extent there are specific individuals indicated on documents that USEPA determines may at one point have had the information sought, SMC is willing to investigate its records further to ascertain, if possible, a last known address.

23. Please provide contact information, including names, telephone numbers, email addresses and physical mailing addresses, for all former employees of either the Company, other companies, or government agencies that have or potentially have knowledge of operations at the SCC Facility associated with radioactive materials including the disposal of any such radioactive materials at or near the SCC facility. If no current contact information is available, provide the last known contact information.

Answer: Objection. The request seeks speculation as to whether persons "potentially have knowledge" and whether non-SCC persons have knowledge. Further, as stated, SCC operated at the SCC Facility for decades, ceased operations by 1977, and any disposal at the Site must have occurred before 1957 and thus all percipient witnesses to those activities are unlikely to be located (assuming they are not deceased). SMC conducted a reasonable search and examination of the records in its possession, custody, and control, and found no documents or information responsive to this Request. To the extent there are specific individuals indicated on documents that USEPA determines may at one point have had the information sought, SMC is willing to investigate its records further to ascertain, if possible, a last known address.

24. Describe the circumstances that precipitated the termination of operations at the SCC Facility, and indicate whether the operations were relocated and if so, to where.

Answer: SCC ceased operations at the SCC Facility in 1977 as a result of diminishing markets for chemicals produced by the plant. SMC-789 0702, 0709.

25. Indicate whether the Company or others have ever conducted any assessments, investigations, or cleanups of hazardous substances or wastes at the SCC Facility. If yes, provide any reports or communications generated in connection with this work.

Answer: Objection. As USEPA should be aware, SMC investigated and cleaned up the SCC Facility in the early 1980s through the 1990s. See 1992 Record of Decision. SMC-789 0862-0939. The State of New York was closely involved in those activities and SMC disclaims any responsibility to obtain materials in that file and provide same to USEPA. SMC further objects as overbroad the attempt to link an investigation and cleanup of materials not involving radioactive materials to the radioactive materials at the Site. See Answer to Request No. 21 above.

STAUFFER CHEMICAL COMPANY LANDFILL/ARTPARK:

As stated above, no nexus has been shown between the SCC Landfill and the Site. USEPA's authority extends to requests for information concerning the "identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a ... facility or transported to a ... facility." 42 U.S.C. § 9604(e)(2)(A). USEPA has not offered any information concerning such generation or transportation, and SMC's investigation did not uncover any such information. Accordingly, there is no basis to further investigate the activities at the SCC Landfill and SMC objects to each and every request concerning the SCC Landfill. Notwithstanding USEPA's lack of authority, SMC did investigate the records it retains relating to the SCC Landfill and responds to the requests as stated below.

26. Provide any information and/or documents relating to ownership and/or operation by the Company or any other entity, past or present, of the former quarry and landfill facility located at or near 5915 Old Lewiston Road in Lewiston, New York, which now comprises Artpark ("SCC Landfill"). Identify the dates of your Company's ownership and/or operation of the SCC Landfill, and provide copies of all documents evidencing such ownership and/or operation, including but not limited to purchase and sale agreements, deeds, leases, etc.

Answer: Title documents are available in the public record. Further, the SCC Landfill has previously been investigated by the state authorities and those records should be available to USEPA. Documents demonstrate that SCC used the SCC Landfill to dispose of waste from the SCC Facility from approximately 1953-1969. SMC-789 0037, 0694, 1160. During this period of time (starting in 1953) the Village of Lewiston obtained a license from SCC to simultaneously use the property for dumping purposes. SMC-789 0577. In 1958 PASNY acquired some of the property from SCC. SMC-789 0618-0620. No information or documents were found regarding how other portions of the SCC Landfill property were disposed of.

27. Identify any persons or entities that concurrently with the Company exercised actual control or that held significant authority to control activities at the SCC Landfill.

Answer: Objection. Whether persons or entities had “significant authority to control activities” at the SCC Landfill is too vague to allow a response. See Answer to Request No. 26 above.

28. Describe in detail the nature of the operations at the SCC Landfill, and provide all records documenting the types and amount of waste sent to and/or accepted at the SCC Landfill, including, but not limited to copies of shipping manifests, shipping logs, receipts, weight tickets, and/or permits.

Answer: Documents indicate that SCC disposed of waste from the SCC Facility using its own trucks at the SCC Landfill. SMC-789 0037, 0694. The waste consisted of concrete cellparts, asbestos, graphite, refractory reactor linings, scrap sulfur, scrap metal, silicon oxides, zirconium oxides, titanium oxides, and cinders. *Id.* Several times a year a bulldozer was used to level off the debris and cover materials. SMC-789 0568.

29. Indicate whether the Company has any information or documents relating to the generation, handling, storage, transportation, or disposal of radioactive or potentially radioactive materials at the SCC Landfill. If so, please provide such information and documents.

Answer: See Answer to Request No. 28 above.

30. Provide a list of all transporters that disposed of waste at the SCC Landfill and that activity by year. If the waste was disposed of pursuant to a written contract, provide a copy of any such contract or agreement.

Answer: The documents indicate that SCC only used its own employees and SCC vehicles to transport wastes to the SCC Landfill. SMC-789 0067, 0694.

31. Identify all persons directly involved in overseeing activities at the SCC Landfill, including employees (with names and last available contact information) who had or have knowledge, information, or documents about the former quarry and/or the SCC Landfill operations.

Answer: See Answer to Request No. 22 above.

32. Provide copies of boring logs, geologic reports, well logs, well locations, soil samples, and all sampling data for the SCC Landfill, including sampling locations of all such samples.

Answer: Objection. The SCC Landfill is not proximate to the Site and thus the request is overbroad. SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents responsive to this Request.

33. Provide a description of the method of waste disposal (e.g., whether the waste was compacted or crushed prior to disposal), the thickness of waste deposited, and the amount of clean cover on top of the waste.

Answer: Objection. The method of waste disposal and other information sought concerning the SCC Landfill is not relevant to the generation of wastes containing radioactive materials and the landfill is not proximate to the Site. See Answer to Request No. 28 above.

34. Provide narrative and documentary information as to any waste that has been transferred from the SCC Landfill to any other location, including but not limited to copies of shipping manifests, shipping logs, receipts, weight tickets, and/or permits.

Answer: SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents responsive to this Request.

35. Provide the dates and circumstances under which the SCC Landfill was closed.

Answer: The closure of the SCC Landfill occurred after the activities that brought materials to the Site and thus the closure is not relevant and the request is overbroad. SCC disposed of waste at the SCC Landfill until 1969. SMC-789 0037, 0694, 1159-1161. SMC's search and examination of records produced no information or documents related to the circumstances of the SCC Landfill closing. The documents indicate that Power Authority of the State of New York acquired a significant portion of the property in 1958. SMC-789 0618-0620.

36. Indicate whether the Company or another entity has ever conducted any assessments, investigations, or cleanups of hazardous substances or wastes at the SCC Landfill. If yes, provide any reports or communications generated in connection with this work.

Answer: Objection. The cleanup of hazardous substances or wastes at the SCC Landfill other than wastes containing radioactive materials is not relevant to the circumstances at the Site and thus the request is overbroad. The New York State Department of Environmental Conservation's website indicates that the SCC Landfill (Site Code: 932049, Stauffer Chemical - Art Park Site) was reclassified and removed from the Registry of Inactive Hazardous Waste Disposal Sites on November 28, 2011. SMC-789 1159-1161.

37. Provide any information and/or documents related to any sampling, surveying, or other investigatory activities performed by the Company or another entity that assessed whether any materials, waste, and/or environmental media at the SCC Landfill exhibited characteristics of radioactive activity.

Answer: See Answer to Request No. 36 above.

UPPER MOUNTAIN ROAD LANDFILL/ LOVE CANAL NORTH:

As stated above, no nexus has been shown between the UMR Landfill and the Site. USEPA's authority extends to requests for information concerning the "identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a ... facility or transported to a ... facility." 42 U.S.C. § 9604(e)(2)(A). USEPA has not offered any information concerning such generation or transportation, and SMC's investigation did not uncover any such information. Accordingly, there is no basis to further investigate the activities at the UMR Landfill and SMC objects to each and every request concerning the UMR Landfill. Notwithstanding USEPA's lack of authority, SMC did investigate the records it retains relating to the UMR Landfill and responds to the requests as stated below.

38. Provide any information and/or documents relating to ownership and/or operation by the Company or any other entity, past or present, of the former landfill facility located at or near 1169 Upper Mountain Road ("UMR Landfill"), also known as the Love Canal North Site. Identify the dates of your Company's ownership and/or operation of the UMR Landfill and provide copies of all documents evidencing such ownership and/or operation, including but not limited to purchase and sale agreements, deeds, leases, etc.

Answer: Title documents are available in the public record. Further, the UMR Landfill has previously been investigated by the state government and those records should be available to USEPA. The documents demonstrate that SCC or a predecessor company used the UMR Landfill to dispose of waste from the SCC Facility from approximately 1930-1952. SMC-789 0041, 0693, 0734. The waste consisted of concrete cellparts, asbestos, graphite, refractory reactor linings, scrap sulfur, scrap metal, silicon oxides, zirconium oxides, titanium oxides, and cinders. *Id.* The UMR Landfill wastes are estimated to be covered by one foot of fill. *Id.*

39. Identify any persons or entities that concurrently with the Company exercised actual control or held significant authority to control activities at the UMR Landfill.

Answer: Objection. Whether persons or entities had “significant authority to control activities” at the SCC Landfill is too vague to allow a response. SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents indicating SCC operated or significantly controlled activities at the UMR Landfill. The documents indicate that a Mr. & Mrs. Whittaker owned the UMR Landfill at the time of landfilling. SMC-789 0041, 0059, 1166.

40. Describe in detail the nature of the operations at the UMR Landfill, and provide all records documenting the types and amount of waste that were sent to and/or accepted at the UMR Landfill, including but not limited to copies of shipping manifests, shipping logs, receipts, weight tickets, and/or permits.

Answer: See Answer to Request No. 38 above.

41. Indicate whether the Company has any information or documents relating to the generation, handling, storage, transportation, or disposal of radioactive or potentially radioactive materials at the UMR Landfill. If so, please provide such information and documents.

Answer: See Answer to Request No. 38 above.

42. Provide a list of all transporters that the Company has information of regarding the disposal of waste at the UMR Landfill and that activity by year. If the waste was disposed of pursuant to a written contract, provide a copy of any such contract or agreement.

Answer: The documents indicate that SCC used its own employees and SCC vehicles to transport wastes to the UMR Landfill. SMC-789 0693.

43. Identify all persons directly involved in overseeing activities at the UMR Landfill, including employees (with names and last available contact information) who had or have knowledge, information, or documents about the UMR Landfill operations.

Answer: See Answer to Request No. 22 above.

44. Provide copies of boring logs, geologic reports, well logs, well locations, soil samples, and all sampling data for the UMR Landfill, including sampling locations of all such samples.

Answer: Objection. The UMR Landfill is not proximate to the Site and thus the request is overbroad. SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents responsive to this Request.

45. Provide a description of the method of waste disposal (e.g., whether the waste was compacted or crushed prior to disposal), the thickness of waste deposited, and the amount of clean cover on top of the waste.

Answer: Objection. The method of waste disposal and other information sought concerning the UMR Landfill is not relevant to the generation of wastes containing radioactive materials and the landfill is not proximate to the Site. See Answer to Request No. 38 above.

46. Provide narrative and documentary information as to any waste that was transferred from the UMR Landfill to another location, including but not limited to copies of shipping manifests, shipping logs, receipts, weight tickets, and/or permits.

Answer: SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents responsive to this Request.

47. Provide the dates and circumstances under which the UMR Landfill was closed.

Answer: The UMR Landfill is not proximate to the Site and thus the request is overbroad. SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents responsive to this Request. SCC ceased use of the UMR Landfill in approximately 1952. SMC-789 0693, 1166-1168.

48. Indicate whether the Company or another entity has ever conducted any assessments, investigations, or cleanups of hazardous substances or wastes at the UMR Landfill. If yes, provide any reports or communications generated in connection with this work.

Answer: Objection. The cleanup of hazardous substances or wastes at the UMR Landfill other than wastes containing radioactive materials is not relevant to the circumstances at the Site and thus the request is overbroad. The New York State Department of Environmental Conservation's website indicates that the UMR Landfill (Site Code: 932034, Stauffer Chemical, Whittaker Subdivision, located at 1169 Upper Mountain Road) was delisted from the Registry of Inactive Hazardous Waste Disposal Sites in 1995. SMC-789 1166-1168.

49. Provide any information and/or documents related to any sampling, surveying, or other investigatory activities performed by the Company or another entity that assessed whether any materials, waste, and/or environmental media at the UMR Landfill exhibited characteristics of radioactive activity.

Answer: SMC conducted a reasonable search and examination of the records in its possession, custody, and control and found no documents responsive to this Request.

GENERAL QUESTIONS:

50. If the Company has any additional information or documents relating to the generation, handling, storage, transportation, or disposal of radioactive or potentially radioactive materials within 10 miles of the Site, please provide such information and/or documents.

Answer: Objection. The request is impermissibly vague regarding the meaning of "relating to" and overbroad through its reference to activities in a 300 square mile area without any limitation as to time. By way of a response SMC states, other than as explained above—it has no additional information.

51. If you have reason to believe that there may be persons who are able to provide a more detailed or complete response to any question contained herein or who may be able to provide additional responsive documents, please identify such persons (with names and last available contact information) and the additional information or documents that they may have.

Answer: Objection. The request calls for speculation. To the extent it does not call for speculation SMC states that, among others, personnel at the USEPA, the United States Department of Energy, the New York State Department of Health, the New York State Department of Environmental Conservation, municipal offices and libraries of Lewiston and other area communities, county offices, and all parties (and their counsel and consultants) to the lawsuit *Talarico Bros. Building Corp., et al. v. Union Carbide Corp., et al.*; Civil Action No.: 1:17-cv-01041-WMS (W.D.N.Y), may be persons who are able to provide a more detailed or complete response to any question contained herein or who may be able to provide additional responsive documents.

52. State the name, title, and address of each individual who assisted or was consulted in the preparation of the responses to this Request for Information. In addition, state whether each such person has personal knowledge of the information in the answers provided.

Answer: Counsel to SMC J. Wylie Donald, Esq., Partner, and Maximillian Schultz, Esq., Associate, McCarter & English, LLP, 1301 K Street, NW, Washington, DC 20005, and Chintan Amin, Esq., Sr. Ass't General Counsel, Bayer U.S. LLC, 100 Bayer Blvd., Whippany, New Jersey 07981 assisted or were consulted in the preparation of these responses. Mr. Amin has some personal knowledge of the corporate features of BCS. Otherwise Mr. Amin, Mr. Donald and Mr. Schultz have no personal knowledge of the content of the responses and these responses were prepared from their review of documents.

Margo Ludmer, Esq.
May 27, 2022
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Respondent is represented by legal counsel and future correspondence in this matter should be directed to Respondent's counsel at the following address:

J. Wylie Donald, Esq.
McCarter & English, LLP
1301 K Street, NW
Washington, DC 2000
Tel: (202) 753-3352
Fax: (302) 220-4608

Sincerely,

A handwritten signature in black ink, appearing to read 'Max Schultz', with a stylized flourish at the end.

Maximillian A. Schultz
of McCarter & English

cc: Charles N. Elmendorf
J. Wylie Donald, Esq.
Chintan Amin, Esq.

**STATEMENT IN LIEU OF CERTIFICATION OF ANSWERS TO REQUEST
FOR INFORMATION**

State of Delaware:

County of New Castle:

As set out in the General Objections above, it is SMC's position that provisions of CERCLA do not authorize and/or require that persons or entities responding to a 104(e) request provide a certification or affidavit with respect to such response. However, SMC states that, in connection with preparation of the 104(e) responses set forth in its counsel's letter dated May 27, 2022 concerning the property at 789 Upper Mountain Road, Lewiston, New York, it has undertaken a diligent inquiry to locate, review, and assemble information in its possession, custody and control responsive to the request. SMC is also prepared to supplement this Response in the event that it uncovers additional responsive information.

For Stauffer Management Company LLC

John-Paul Rossi
NAME

Secretary
TITLE

[Signature]
SIGNATURE

Sworn to before me this
3rd day of June, 2022

Notary Public



State of Delaware)
)
County of New Castle) SS:

I, Darlene M. Allison, a notary public in the State of Delaware, in New Castle County, witnessed
in my presence the signature of John-Paul Rossi this 3rd day of June, 2022.

Darlene M. Allison
Notary Public

My commission expires: April 8, 2023

